which he never exercised, to revoke the settlement. It should also be mentioned that no authorities are referred to in the judgment of Deane J. and it is possible that the report of *In re Ioakimidis Policy Trusts*, (1925) 1 Ch. p. 403 above referred to and which was decided earlier in the same year, was not yet available in the Colony. Furthermore, the cases of *In re Fleetwood's Policy*, (1926) 2 Ch. p. 48 and of *Cousins* v. *Sun Life Assurance Society*, (1933) 1 Ch. p. 126 in which it was held that section 11 of the Married Women's Property Act 1882 might apply even though the interest under the policy was contingent, had not been decided. It is also clear from the decision of Bennett J. in the recent case of *re Gladitz*, (1937) 3 A.E.R. p. 173 that the tendency in England is to give a wide interpretation to section 11 of the Married Women's Property Act, and in that case policy moneys, payable under a Lloyds accident policy with a memorandum indorsed on the policy that all claims under the policy should be payable to the wife of the assured, were held to be settled upon the wife by virtue of the section above referred to.

For these reasons I cannot regard the decision of Deane J. as being an authority which I ought to follow in deciding the issue now before me.

The estate duty on the policy moneys should be paid out of such policy moneys. The costs of all parties should be taxed as between solicitor and client as on a summons in chambers and paid out of the general estate. Under the provisions of Rule 49(1) of Order 62 I allow a fee of $25 per hour for attendance.

Order Accordingly.

Solicitors for the trustees—*John G. Campbell & Co.*

Solicitors for beneficiaries under the will—*Shelley-Thompson & Demuth.*

Solicitors for the beneficiaries named in the policy—*Donaldson & Burkinshaw.*

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

October 29, 1937.

REX v. CHUA ENG HONG.

[SINGAPORE MAGISTRATE'S APPEAL No. 73 of 1937]

Evidence Ordinance (Cap. 13), s. 156 (c)—Impeachment of witness's credibility—Former statements inconsistent with evidence.

The Evidence Ordinance, s. 156 (c) provides that the credit of a witness may be impeached by the adverse party, or with the consent of the Court, by the party who calls him, by proof of former inconsistent statements. Such impeachment of a witness's credibility may render his sworn evidence valueless.

In a case where a District Judge accepted the unsworn statements of a witness, and which were inconsistent with the evidence on oath and where the Court gave no permission to impeach the witness's credibility it was held that such a procedure was quite unjustifiable upon any principle whatever as there was no evidence against the accused at all and he ought never to have been called upon for his defence.

MAGISTRATE'S APPEAL.

Dr. Withers Payne for appellant.

The facts and arguments appear sufficiently from the Judgment.

Cur. Ad. Vult.

TERRELL, AG. C.J.—The accused was charged with, and convicted of causing grievous hurt to one Chua Kan Tong by means of a scythe. The complainant lived alone. He says that his eyes were filled with blood from his injuries. The attack took place during the night, and there is no evidence that there was any light.

It is doubtful whether the complainant was ever in a position to recognise his assailant, and he has stated on oath that he did not recognise him. There was no other witness to the occurrence.

It is necessary therefore to examine the supposed evidence upon which the learned District Judge considered himself entitled to record a conviction.

In paragraph 2 of his grounds of judgment the learned District Judge says:

"But I saw no reason to disbelieve their (the complainant and his witnesses) former statements."

The former statements of the complainant consist of the written information, Exhibit D, and of certain verbal statements alleged to have been made to two police officers. In the information he states that he saw that the accused was his assailant. This statement is however explained by the complainant in the following passage in the course of his evidence at the trial.

> "I did not say Chua Eng Hong was my assailant. At Police Station I was pressed to say who attacked me, but I shook my head as I could not speak. But they pressed me suggesting I must have been attacked in consequence of a love affair. Then I was asked if I had any altercation with anyone, and I said 'Yes, with Chua Eng Hong (the accused), so I gave his name at the 7th mile and also at Hospital" and later
>
> "I do not know why anyone should attack me. I do not know who attacked me."

The complainant's evidence is accordingly that he did not know who attacked him, and he explains how the police got the name of the accused inserted in the information.

But the matter does not rest there. A former statement by a witness is not evidence in itself. Under section 119 of the Criminal Procedure Code a certified copy shall be admitted as evidence of the contents of the original but its use as evidence is governed by the Evidence Ordinance.

Section 158 of the Evidence Ordinance provides that any former statement may be used to corroborate the testimony of a witness. As the information contradicted the evidence on oath this section was clearly inapplicable.

The section 156 (c) of the Evidence Ordinance provides that the credit of a witness may be impeached by the adverse party, or with the consent of the Court, by the party who calls him, by proof of former inconsistent statements.

It is impossible to say whether the prosecution were trying to impeach the credit of the complainant. Certainly there is no record that the Court gave the prosecution permission to do. In any case the only effect of impeaching the credit of a witness is to render his sworn evidence valueless. The learned District Judge however seems to have considered that he was at liberty to accept the unsworn statements of a witness, upon which he was never cross-examined in preference to his statements on oath at the trial. Such a procedure is quite unjustifiable upon any principle whatever.

The same comments apply to the statement alleged to have been made verbally by the complainant in Hospital.

The only other evidence, if it may so be called, consisted of statements alleged to have been made by the complainant's brother, of what the complainant is alleged to have said to him. Apart from the fact that the brother denied on oath having made any such statements, such evidence was the merest hearsay and totally inadmissible.

In my opinion there was no evidence against the accused at all, and he ought never to have been called upon for his defence. The appeal was therefore allowed, and the conviction quashed and the sentence set aside.

Appeal allowed. Conviction quashed.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C. J.

November 19, 1937

CHIA HAN KIAT ..... **Appellant**

vs.

REX ..... **Respondent**

[SINGAPORE MAGISTRATE'S APPEAL No. 45 of 1937]

Criminal procedure—summary trial—lateness of delivery of judgment—effect of—appeal against findings of fact—powers of appellate court to overrule Judge of first instance.

Where the evidence of the complainant before the Criminal District Court was concluded and judgment was not given until nearly six months later, the result was that it was almost impossible for the Judge to remember the impression which a witness had made many months ago and an appellate court would in such circumstances be in an equally good position to weigh the evidence as the District Judge himself.

Discussion of the principles which should guide the High Court in hearing an appeal from the decision of a District Judge when the matter in question is one of fact.

On such an appeal it is the duty of the Appellate Court to be a Judge of fact as well as of law, and the Appellate Court would be abrogating its functions if it made a hard and fast rule never to interfere with findings of fact and if it felt bound to support a judgment which, on a review of all evidence, it considered to be clearly wrong.

MAGISTRATE'S APPEAL.

Braga for the appellant.

Storr Crown Counsel, for the respondent.

Cur. Ad. Vult.

TERRELL, AG. C. J.—The accused was charged on three charges:

(1) With cheating the complainant in respect of a sum of $40 on the 16th April, 1936, or alternatively with committing criminal breach of trust of such sum.

(2) A similar charge and alternative charge in respect of another sum of $40 on the 1st May, 1936.

(3) A charge of cheating by inducing the complainant to sign receipts for $87.03 and $65.77 on the 11th June, 1936 on the pretence that the documents signed were summonses.

One Kwong Kek was charged with abetting the above offences. The appellant was convicted in the alternative on charges (1) and (2), and on charge (3). Kwong Kek was convicted of betting.

The appellant was first brought before the Court on the 27th October, 1936. The trial actually commenced on the 21st December. On that day, and the following day, the complainant had completed his evidence. Judgment was given on the 1st June, 1937, nearly six months later. This long interval is of importance, as it is almost impossible for a Judge to remember the impression which a witness made when months have elapsed, and innumerable other cases have in the meantime been heard and considered. The learned District Judge in fact admits the difficulty in paragraph 12 of his grounds of Judgment.

This is admittedly an appeal against findings of fact, and I fully indorse the principle that an appellate Court should but rarely interfere with the conclusions arrived at by the Judge or Magistrate who has had the advantage of hearing the witnesses and obtaining an impression of their veracity from their demeanour. But it is the duty of an Appellate Court to be a Judge of fact as well as of law, and it would be abrogating its functions if it made a hard and fast rule never to interfere with findings of fact, and felt bound to support a judgment which, on a review of all the evidence, it considered to be clearly wrong.

It is necessary therefore to examine the evidence in order to ascertain whether the learned District Judge was justified in finding that the prosecution had established the guilt of the appellant beyond reasonable doubt.